

FILED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FT. WORTH DIVISION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORTH WORTH DIVISION

2018 JAN -4 PM 4: 37

CLERK OF COURT

CTJ

CQUENTIA SERIES, LLC and  
HTG SERIES, a series declared by  
CQUENTIA SERIES, LLC

*Plaintiffs,*

v.

CHANNEL (H), INC. and  
ROBERT CAPELLI,

*Defendants.*

Case No.: 4:17-cv-00919-A

State Court Cause No.: 348-295398-17

ORIGINAL

**DEFENDANTS' MOTION AND BRIEF FOR  
LEAVE TO AMEND NOTICE OF REMOVAL**

**TO THE HONORABLE JOHN H. MCBRYDE, UNITED STATES DISTRICT JUDGE:**

Pursuant to Local Civil Rule 15.1 and 28 U.S.C. § 1653, Defendants CHANNEL (H), INC. ("Channel (H)") and ROBERT CAPELLI ("Capelli," collectively "Defendants"), specially appearing by and through their undersigned counsel, hereby move this Court for leave to amend its Notice of Removal (Doc. 11).

IN SUPPORT THEREOF, DEFENDANTS state as follows:

1. On November 14, 2017, Defendants electronically filed a notice of removal removing to this Court Plaintiffs CQUENTIA SERIES, LLC ("CQ") and HTG SERIES, a series declared by CQUENTIA SERIES, LLC ("HTG," collectively "Plaintiffs") petition filed in the 348<sup>th</sup> Judicial District, in the District Court of the State of Texas, in and for the County of Tarrant. [Doc. 1] ("Notice of Removal"). In the Notice of Removal, Defendants noted that in the State Court Petition, "Plaintiffs allege that Robert Capelli is an individual residing in Placer County, California.". On November 20, 2017 Defendants submitted for filing a paper version of same.

By order dated November 21, 2017, this Court ordered that Defendants notice of removal be unfiled due to deficiencies with Judge McBryde's Standing Order and directed Defendants to submit proper paper copies by November 28, 2017. *See* [Doc. 9].

2. On November 21, 2017, Defendants filed an Answer to the Petition. [Doc. 10]. In their Answer, Defendants deny Plaintiffs' allegation that Defendant Robert Capelli resides in California. *See* [Doc. 10] at ¶ 5.

3. On November 28, 2017, Defendants submitted for filing proper paper copies of the Notice of Removal. [Doc. 11].

4. In the Notice of Removal, Defendants noted that in the State Court Petition, "Plaintiffs allege that Robert Capelli is an individual residing in Placer County, California." *See* [Doc. 11] at 4.

5. On or about December 12, 2017, Plaintiffs filed a Motion to Remand asserting, *inter alia*, that this Court lacked diversity jurisdiction in part, because of Defendants' reference to Plaintiffs' allegation that Robert Capelli resided in California. *See* [Doc. 18].

6. However, at the time that Defendants filed their notice of removal to this Court, Defendant Robert Capelli was a citizen and domiciliary of Massachusetts, not California. *See* Appendix to Response to Motion to Remand ("Response App."); Declaration of Robert Capelli dated January 4, 2018 ("Capelli Decl."), ¶¶ 2-5. At all relevant times, Defendant Capelli resided in Amesbury, Massachusetts. *See id.*

### **ARGUMENT**

Under 28 U.S.C. § 1653, "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts" after the thirty-day period for removing a state court action under 28 U.S.C. § 1446(b) has expired. *Sanders v. Leggett & Platt, Inc.*, 2010 WL 3282978, at \*1 (N.D. Tex. Aug. 17, 2010); *see also Moore v. Gladiator Events, LLC*, 2015 WL 5459625 at

\*4 (N.D. Tex. Sept. 15, 2015) (granting motion to amend notice of removal to correct jurisdictional allegations concerning citizenship of members of LLC and individuals). “Section 1653 is liberally construed to allow a party to cure technical defects, including the failure to specifically allege the citizenship of parties.” *Moore*, 2015 WL 5459625 at \*4 (internal quotations omitted).

Here, Defendants seek leave to amend their Notice of Removal to clarify Capelli’s domicile in Massachusetts, as well as to assert the citizenship of the members of each of the Plaintiffs. In consideration of same, a copy of the proposed amended notice of removal is filed herewith.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant their request for an order amending the notice of removal.

Dated: January 4, 2018

Respectfully submitted,

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*Attorneys for Specially Appearing Defendants*

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that a conference was held on Thursday, January 4, 2018 with Rafael C. Rodriguez, counsel for record for Plaintiffs in this proceeding, in an attempt to resolve the issues contained in the foregoing Motion for Leave to Amend Notice of Removal. Counsel for Plaintiffs are opposed to the relief sought herein. A reasonable effort has been made to resolve the dispute raised herein without the necessity of court intervention and the effort failed. Therefore, this Motion for Leave to Amend Notice of Removal is presented to the Court for determination.

  
MARGARET HORTON APGAR

**CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2018, I served the following attorneys of record in accordance with the Federal Rules of Civil Procedure, including via email/electronic service:

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